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AFN 2-5 L003

APPLICATION NO.	PILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,741	03/08/2001	Douglas A. Fisher	PF-0442-2 DIV	1847

27904 7590 04/24/2003

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[REDACTED] EXAMINER

HUFF, SHEELA JITENDRA

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

1642

DATE MAILED: 04/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/802,741	FISHER ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Sheela J Huff	1642

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 November 2002.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3,6-8,11,13-15,20,21 and 40-49 is/are pending in the application.
  - 4a) Of the above claim(s) 20 and 40-49 is/are withdrawn from consideration.
- 5) Claim(s) 11,13-15 and 21 is/are allowed.
- 6) Claim(s) 3 and 6-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-848)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

### *Response to Amendment*

The amendment filed on 11/27/02 has been considered. Applicant's arguments are deemed to be persuasive-in-part.

Claims 3, 6-8, 11, 13-16, 20-21 and 40-49 are pending.

Claims 3, 6-8 and 11 are currently under consideration.

Claims 13-15, 20-21 and 40-49 are withdrawn from consideration as being drawn to a non-elected invention.

All objections and rejections pertaining to claim 12 are withdrawn in view of its cancellation.

The rejection under 35 USC 101 (double patenting) is withdrawn in view of the cancellation of the claims.

The rejection under obviousness-type double patenting is withdrawn in view of the terminal disclaimer.

### *Response to Arguments*

#### *Claim Rejections - 35 USC § 112*

Claims 3 and 6-8 remain rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The reasons for this rejection are of record in paper no. 9, mailed 8/29/02.

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Applicant did not address the issue of "immunogenic". The rejection pertaining to fragments and percent identity is withdrawn.

***Election/Restrictions***

Claim 11 is directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), claims 13-15 and 21 directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Process claim 13-15 and 21 are hereby rejoined and fully examined for patentability under 37 CFR 1.104. Claims 20 and 40-40, not directed to the process of making or using the patentable product, will not be rejoined.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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ALLOWED CLAIMS

Product claim 11 and Method Claims 13-15

11. An isolated polynucleotide selected from the group consisting of:
- a) a polynucleotide comprising the polynucleotide sequence of SEQ ID NO:2,
  - b) a polynucleotide comprising a polynucleotide sequence at least 90% identical to the polynucleotide sequence of SEQ ID NO:2, encoding a polypeptide comprising the amino acid sequence of SEQ ID NO:1 and said polypeptide having cyclic nucleotide phosphodiesterase activity,
  - c) a polynucleotide complementary to a polynucleotide of a),
  - d) a polynucleotide complementary to a polynucleotide of b) and
  - e) an RNA equivalent of a)-d).

13. A method for detecting a target polynucleotide in a sample, said target polynucleotide having a sequence of a polynucleotide of claim 11, the method comprising:

- a) hybridizing the sample with a probe comprising at least 20 contiguous nucleotides comprising a sequence complementary to said target polynucleotide in the sample, and which probe specifically hybridizes to said target polynucleotide, under conditions whereby a hybridization complex is formed between said probe and said target polynucleotide or fragments thereof, and
- b) detecting the presence or absence of said hybridization complex, and, optionally, if present, the amount thereof.

14. A method of claim 13, wherein the probe comprises at least 60 contiguous nucleotides.

15. A method for detecting a target polynucleotide in a sample, said target polynucleotide having a sequence of a polynucleotide of claim 11, the method comprising:

- a) amplifying said target polynucleotide or fragment thereof using polymerase chain reaction amplification, and
- b) detecting the presence or absence of said amplified target polynucleotide or fragment thereof, and, optionally, if present, the amount thereof.